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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Lassen)

In re V. S., a Person Coming Under the Juvenile Court
Law.

C079242

LASSEN COUNTY CHILD AND FAMILY
SERVICES,

(Super. Ct. No. J6099)

Plaintiff and Respondent,

v.

J. S.,

Defendant and Appellant.

J. S., father of the minor V. S., appeals from an order of the juvenile court denying him reunification services. (Welf. & Inst. Code,¹ § 361.5.) Father contends: (1) there is insufficient evidence to support a finding that he was provided reasonable services; and

¹ Undesignated statutory references are to the Welfare and Institutions Code.

(2) the juvenile court abused its discretion in terminating services to him. We disagree with both claims and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On October 11, 2014, the minor, then two years old, was detained following the arrest of her mother for, among other things, driving under the influence and driving while the minor was not properly restrained. At the time of her arrest, mother told law enforcement officers the minor's father suffered from a substance abuse problem and had physically abused the minor and failed to seek medical attention for the minor's injuries.

On October 15, 2014, the Lassen County Child and Family Services Department (the Department) filed a dependency petition as to both parents alleging the minor came within section 300, subdivisions (b) and (g).² With respect to father, the petition alleged that, on or about September 8, 2014, the minor suffered injuries to her face, teeth, and gums while in father's care, and that father failed to seek medical or dental treatment for the minor following the injury. The petition further alleged father had "a long history of illicit and other drug abuse and is a frequent user of . . . methamphetamines."

With respect to mother, the petition alleged that, upon learning of the minor's injuries sustained on September 8, 2014, mother failed to seek medical or dental treatment for the minor. The petition further alleged mother had "a long history of illicit and other drug abuse and is a frequent user of opiates, methamphetamines and alcohol." It was also alleged that, on or about October 12, 2014, the minor was present when mother was involved in criminal activity, including driving while under the influence, and that mother failed to secure the minor in an appropriate car restraint.

Following the October 16, 2014, detention hearing, the juvenile court found detention of the minor was proper and ordered that both parents be permitted supervised

² Mother is not a party to this appeal.

in-person visitation with the minor (who was placed in the home of a nonrelative extended family member) two times per week.

On November 3, 2014, after conducting a contested jurisdictional hearing, the court sustained the petition and amended it to reflect father's status as the minor's presumed father. The court set the matter for disposition and ordered that both parents submit to drug testing prior to any visitation with the minor.

The Department's disposition report recommended that reunification services be offered to mother and father and noted both parents "state a willingness to get services." The report stated that while mother had been honest and open regarding her addiction, father had "not been as honest and open with the department." By way of example, the report noted father claimed he had not been using methamphetamine, but recent drug testing "indicates the opposite." The report also noted father had attended few visits with the minor despite his stated desire to gain custody.

At the December 1, 2014, disposition hearing, the court ordered that mother and father be provided reunification services.

The Department filed a status review report on May 1, 2015. The report recommended that the minor remain a dependent child of the juvenile court and be returned to mother's care under a plan of family maintenance, and that father's reunification services be terminated. According to the report, mother was in an in-patient treatment center and "making excellent progress," while father was incarcerated, having been booked on January 11, 2015, and charged with possession of paraphernalia (a charge which was later dismissed) and failure to appear on his own recognizance, and was due to be released on June 24, 2015. Father "visited with his daughter on a weekly basis before he was incarcerated" and he "tested positive for two of his six tests." Father "was not engaging in services," currently incarcerated and unable to work, "tested positive on more than one occasion," "was under the influence for two visits and was not attending every visit weekly," "ha[d] yet to engage in reunification services due to being

incarcerated,” and “was unable to obtain residence for his child,” but was “engaging in positive interaction” when visiting with the minor. The report indicated father’s last visit with the minor was December 29, 2015. The Department concluded that father “did not engage in services or participate in activities to support his goals of reunification,” and recommended that services be terminated.

At the May 11, 2015, six-month status review hearing, the social worker testified that, prior to father’s incarceration, father “had every opportunity to speak to us. I did try to reach out to him. He gave me numbers and addresses that I tried to contact him at. He [sic] was not able to contact them, so that was prior to his arrest, so his visit record was not consistent.” With regard to father’s visitation, the social worker testified father “did not visit . . . with [the minor] both days. So it was two one-hour visits a week. And so he would show up to one visit a week.” The social worker stated father did not complete any of the goals of his reunification plan prior to his incarceration on January 11, 2015. In particular, father did not have a job, did not comply with all court orders, tested positive for methamphetamine, failed to contact the social worker regularly, was homeless, and failed to accept responsibility for his actions, but did engage in a positive manner with the minor when he did visit. The social worker said that, even if father were provided additional reunification services, there was little likelihood the minor could be returned to father.

Father testified that he was incarcerated at the county jail on January 11, 2015, for a probation violation. Prior to incarceration, he participated in reunification services by enrolling in a drug and alcohol program and undergoing an assessment, but never attended any drug and alcohol classes and never provided any information to the Department regarding the assessment. He was also using methamphetamine frequently during that time period and was never able to maintain sobriety. Before being jailed, he was “in the office weekly” for visits with the minor, but never contacted the social worker regarding the case. While incarcerated, he never contacted the Department to

check on the status of the minor, and has not received any drug treatment. He stated he was willing to engage in services to reunify with the minor. He also stated that, upon his release from jail, he would rent an apartment at the same complex where he rented a room for six months prior to his incarceration. However, he admitted he never informed the Department of his preincarceration living situation.

The court concluded it was not reasonably likely father would reunify with the minor if provided an additional six months of services, finding as follows:

“The matter being submitted, [the minor] was taken when she was under the age of three, so the law says that the parents need to reunify within six months. And of course, if they fail to do that, then the Court has to look to see whether or not there’s a reasonable likelihood that the child will reunify with the parents with six more months of services.

“[Father] does find himself incarcerated as of January the 11th. It’s not only his incarceration that’s as troubling [*sic*], however according to the report, he was incarcerated for failing to appear in court. So apparently, he didn’t take his criminal matter seriously either, and possession of paraphernalia -- drug paraphernalia, by his own admission.

“He continued to use drugs. He’s never contacted the Department, ever, whether out of custody or in-custody. Reasonable services were offered to him right out of the box since October. And the only thing that [father] has testified to is that he did an intake at Drug and Alcohol with no classes, never provided proof of that. And that he did visit with [the minor]; however, he says inconsistently. The Department says inconsistently. And so [father] hasn’t done -- hasn’t availed himself of services.

“So at this juncture, based on [father]’s performance since October, is there a reasonable likelihood that he’ll reunify with [the minor] should services continue? And of course, he’s incarcerated until June. And then there’s a short period of time after that, based on his past performance, it doesn’t appear to the Court that that’s going to occur,

despite his willingness now or saying now he would engage in services. Certainly, nothing stopped him from engaging in services from October to January.”

The court terminated reunification services to father and placed mother and the minor under a plan of family maintenance at the residential treatment program, noting the minor would be detained if mother left that program.

Father filed a timely notice of appeal.

DISCUSSION

I

Sufficient Evidence Of Reasonable Services To Father

Father contends there is insufficient evidence to support the juvenile court’s finding that the Department provided him with reasonable reunification services. We disagree.

When a child is removed from the parent’s home, reunification services may be offered to the parent, “ ‘in an effort to eliminate the conditions leading to loss of custody and facilitate reunification of parent and child. This furthers the goal of preservation of family, whenever possible.’ ” (*In re Allison J.* (2010) 190 Cal.App.4th 1106, 1112.) “For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age, court-ordered services shall be provided for a period of six months from the dispositional hearing . . . but no longer than 12 months from the date the child entered foster care” (§ 361.5, subd. (a)(1)(B).)

“Reunification services must be ‘designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.’ (§ 362, subd. (c).) Accordingly, a reunification plan must be appropriately based on the particular family’s ‘unique facts.’ [Citation.] ‘Absent a finding of detriment, even incarcerated parents are entitled to reasonable reunification services, whatever the likelihood of success. [Citations.] Visitation is a critical component, probably the most critical component, of a reunification plan. [Citations.]’ ” (*In re T.G.* (2010) 188 Cal.App.4th 687, 696-697.)

“[The Department] ‘must make a good faith effort to develop and implement a family reunification plan. [Citation.] “[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult” [Citation.]’ [Citation.] ‘The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.’ [Citation.] ‘The applicable standard of review is sufficiency of the evidence. [Citation.]’ [Citation.]” (*In re T.G.*, *supra*, 188 Cal.App.4th at p. 697.)

Here, there is substantial evidence that, under the circumstances, the Department provided reasonable services to father. The minor was initially detained on October 11, 2014. The juvenile court ordered that father be permitted supervised in-person visits with the minor, and formally ordered reunification services on December 1, 2014. Father’s case plan included participation in general, mental health, and substance abuse counseling; substance abuse testing; a 12-step program; and parenting education. The service objectives required that father “obtain resources to meet the needs of [the minor] and to provide a safe home”; comply with all court orders; maintain a relationship with the minor by following the conditions of the visitation plan; “[s]tay free from illegal drugs and show your ability to live free from drug dependency”; comply with all required drug tests; not break the law; avoid arrests and convictions; meet the minor’s physical, emotional, medical, and educational needs; follow all conditions of probation/parole; obtain and maintain a stable and suitable residence for himself and the minor; be nurturing and supportive during visitation; show an ability to provide adequate care for the minor’s special needs; and show acceptance of responsibility for his actions. Father testified he was aware of the case plan and its requirements.

While the record does not specifically note the Department's referrals for particular services, father testified he enrolled in a drug and alcohol program and completed an assessment. From that testimony we infer that referrals were made for a substance abuse assessment and treatment program. We also infer the Department's referral for drug testing, given the notation in the status review report that father "tested positive on more than one occasion." As for any other services requiring referrals, the record makes plain that attempts to contact father were fruitless. The social worker testified she "did try to reach out" to father at the addresses and telephone numbers he provided but could not reach him. The social worker further testified that father failed to maintain contact with her, either before or during his incarceration, a fact father admitted during his testimony at the status review hearing.

Despite that father was aware of the case plan and its requirements, he failed to maintain contact with the Department and made little effort to participate in the case plan prior to his incarceration, visiting the minor only sporadically (twice while he was under the influence), and enrolling in drug treatment and completing an assessment but not attending any of the classes. He claimed he worked for a roofing company and lived in a rented room in an apartment for six months, but admitted he never provided the Department with information regarding either. He drug tested positive "on more than one occasion." He broke the law by possessing drug paraphernalia and violating probation, resulting in his jail sentence.

Once incarcerated, father made no attempt to contact the Department, nor did he attempt to find or participate in a drug treatment program, receive assistance with his substance abuse problem, or engage in any services at the jail.

Essentially ignoring his own lack of participation during the three months prior to his incarceration, father claims that, once he was incarcerated, the Department "abandoned efforts to help" him and failed to maintain reasonable contact with him or provide him with any assistance in accessing the services required by his case plan. The

argument is untenable. Again, the Department's attempts to contact father via the addresses and telephone numbers provided were unsuccessful. Father does not assert how or when he contacted the Department to inform them of his incarceration. He simply states he was "booked into the county jail on January 11, 2015" (citing to a notation in the status review report) and argues the Department "knew precisely where he was and how to reach him." However, while the status review report does note father "is currently incarcerated" and serving time at the Lassen County Adult Detention Facility, that report was not prepared and filed until approximately one week prior to the status review hearing. Neither that report nor any other portion of the record reveals when or how the Department learned of father's incarceration.

In any event, father's case plan was already in place at the time of his incarceration, and he was well aware of the objectives of the plan and his responsibilities related to those objectives. Once in jail, he made no attempt to contact the Department to inform them of his incarceration, and made no effort to determine whether the jail offered any of the services he needed, such as a 12-step program, substance abuse counseling, or parenting classes. Nor does he assert what it is the Department could have done to further assist him in light of his incarceration, other than to argue the Department failed to "attempt to modify [his] case plan to take into account the fact that he had been taken into custody." We are not persuaded.

Nor are we persuaded by father's argument that the Department should have anticipated that he would likely be incarcerated given his substance abuse problems and "legal difficulties" and should have taken that into account in helping him overcome the issues underlying the minor's detention. As demonstrated by the case plan, the Department anticipated father would comply with all court orders, stay free from illegal drugs, not break the law, and avoid arrests and convictions. He failed all of those objectives.

Substantial evidence supports the juvenile court's finding that the Department provided reasonable reunification services to father.

II

No Abuse Of Discretion

Father also contends the juvenile court abused its discretion in terminating reunification services. Again, we disagree.

If, at the six-month status review hearing, the juvenile court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may terminate reunification services and schedule a hearing pursuant to section 366.26 within 120 days. (*M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, 175-176; § 366.21, subd. (e).)

We review a juvenile court's order terminating reunification services for abuse of discretion. (*In re Alanna A.* (2005) 135 Cal.App.4th 555, 558-559.)

Father acknowledges the juvenile court retained the discretion to terminate the offer of reunification services to one parent while allowing services to be provided to the other (*In re Jesse W.* (2007) 157 Cal.App.4th 49, 59, 65; *In re Alanna A.*, *supra*, 135 Cal.App.4th at p. 559), but argues he is likely to have continued contact with the minor and thus additional services are in the minor's best interest. Again, we are not persuaded.

In *Alanna A.*, the minor's father initially visited with the minor, but did " 'very little' " to participate in services, failed to enroll in a substance abuse recovery program, was dropped from counseling services, only sporadically attended a domestic violence program, and soon stopped visits with the minor altogether. The father failed to remain in contact with the social worker and failed to participate in drug court despite repeated promises to do so, resulting in brief periods of incarceration. (*In re Alanna A.*, *supra*, 135 Cal.App.4th at pp. 560-561.) At the 12-month review hearing, the juvenile court continued reunification services to the mother, but terminated services to the father in

light of his failure to comply with case plan requirements or to make an effort to visit the minor. (*Id.* at p. 561.) The father appealed the order terminating services.

The appellate court affirmed, finding the juvenile court reasonably concluded the father's performance "did not merit continued reunification services," and termination of services was therefore not an abuse of discretion. (*In re Alanna A., supra*, 135 Cal.App.4th at p. 565.) The court noted in passing that "[a]s a practical matter . . . where a nonreunifying parent is likely to have some continued contact with his or her child, further services to that parent *may* be in the child's best interests." (*Ibid.*, italics added, fn. omitted.)

Here, father fails to state why continued contact with the minor is "likely," other than to note that the chance of the minor reunifying with mother "look[s] good" and "it appears father will be able to maintain his parental rights" even if he is unable to reunify by way of his own case plan. Mother's compliance with her case plan and possible reunification with the minor certainly does not ensure continued contact between father and the minor. As we have already discussed at length, father made little effort to comply with his case plan requirements prior to incarceration and no effort while incarcerated, thus providing a sound basis for termination of his reunification services.

Father argues that, when the Department was able to contact him on October 28, 2014, he expressed remorse, understood he had been negligent, and believed he was capable of getting better. He "had already initiated services with the Lassen County Alcohol and Drug program, and was attending AA meetings," and he was willing to participate in further services to restore custody of the minor. While that may have been the case prior to the December 1, 2014, order for reunification services, thereafter father failed to participate in substance abuse programs of any kind and in fact continued to use methamphetamine until he was taken into custody. Father points out that, although he is not enrolled in a drug treatment plan, he has not used drugs since he was incarcerated and he is willing to enter a residential treatment program. However, he testified at the

hearing that, once released, he would return to “the same environment [he was] in prior to being incarcerated.” Without his ongoing participation in a substance abuse program, his ability to maintain sobriety is questionable.

Finally, father takes issue with the social worker’s testimony that he lacked employment and stable housing. While he points to his own testimony that he was employed as a roofer and rented a room (where he plans to return upon his release from custody) for six months prior to his incarceration, he also testified that he never provided the Department with any information to dispel the notion that he was unemployed and homeless.

The juvenile court did not abuse its discretion in terminating reunification services to father.

DISPOSITION

The juvenile court’s order is affirmed.

/s/
Robie, J.

We concur:

/s/
Blease, Acting P. J.

/s/
Nicholson, J.